



July 18, 2019

Captain Lee Horton
City of Vallejo Police Department
111 Amador Street
Vallejo, California 94590-6301

Via City's Online Portal System and U.S. Mail

RE: SB1421 Follow-up Request for Public Records on Police Use of Force Investigations, Sustained Findings of Police Dishonesty and Sexual Assault

Dear Captain Horton:

I write in response to your message of July 15, 2019, regarding the City's status of providing records available under S.B. 1421's amendment to the California Public Records Act ("PRA"). We appreciate that Vallejo has produced some records responsive to our January 1, 2019, request for records relating to police use of force investigations, sustained findings of police dishonesty and sexual assault.

However, your message indicates that the City will not be producing any records pertaining to uses of force that resulted in great bodily injury prior to October 10, 2012, when the Vallejo Police Department implemented a system to track incidents resulting in the use of force. The City cites to section 6255(a) of the Government Code and *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440 (1983), in asserting that the public interest in disclosure of responsive records is clearly outweighed by the public interest in non-disclosure due to the burden and expense of reviewing records created prior to October 10, 2012.

Section 6255 is not applicable to our request. The enactment of S.B. 1421 and the consequent amendments to Penal Code Section 832.7 displaced all exemptions under the PRA, including those contained within section 6255, or any other provision of law and limited any possible bases for withholding to those specified in Penal Code Section 832.7(b)(7). *See* Penal Code § 832.7(b)(1) ("Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, **or any other law**, the following peace officer or custodial officer personnel records and records maintained by any state or local agency **shall not be confidential and shall be made available for public inspection** pursuant to the California Public Records Act" (emphasis added)).

S.B. 1421's amendments to § 832.7 do not permit withholding information based on burden. While that provision allows for the redaction of certain information, it generally does not allow for the wholesale withholding of records subject to disclosure. *See* Pen. Code § 832.7(b)(6) ("Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest

served by disclosure of the information.”). An agency may only withhold a disclosable record under limited, enumerated circumstances, including when it “is the subject of an active criminal or administrative investigation[.]” Penal Code § 832.7(b)(7). Any argument that the public interest is not served by disclosing the information merely permits redaction but not withholding.

Your reliance on *American Civil Liberties Union Foundation v. Deukmejian* is therefore misplaced, as this case involved an analysis of the Public Records Act that has been displaced by § 832.7’s amended framework. Moreover, *Deukmejian* involved a fact specific inquiry and required a balancing of the competing interests at stake, none of which are applicable or comparable to the interests here. *See, e.g., ACLU v. Deukmejian*, 32 Cal. 3d at 453 (finding after careful examination of the records requested, the burden of segregating exempt from nonexempt information outweighed the utility of disclosure to the ACLU, which the court found to be “questionable,” and any benefit merely “marginal and speculative”). Here while case specific redactions might be appropriate in individual circumstances, such balancing cannot result in withholding of records under the plain language of the statute.

In contrast to *Deukmejian* and other cases analyzing section 6255(a) in the PRA context, the balancing of interests here tips decisively in favor of disclosure. In enacting S.B. 1421, the Legislature recognized the strong public interest in access to these police misconduct records as part of its right to know:

The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety. S.B. 1421, Sec.1(b).

If the City possesses records responsive to our request involving uses of force prior to October 10, 2012, you have not identified any permissible grounds for withholding. An agency is also obligated to conduct a search that is “reasonably calculated to locate responsive documents.” *American Civil Liberties Union of Northern California v. Super. Ct.*, 202 Cal. App. 4th 55, 85 (2011). Based on your response, it appears that you have not made any attempt to search for records relating to uses of force that pre-date October 10, 2012, and have therefore not complied with your obligation under the PRA.

The PRA imposes strict timelines for responding to such requests and mandates that all state and local agencies, upon receipt of a request for public records, (1) determine whether the requested records are “disclosable”—in whole or in part—and (2) “promptly notify” the requestor of that determination “within 10 days from receipt of the request.” Cal. Gov’t Code § 6253(c). Only in specifically enumerated “unusual circumstances” may an agency extend this timeline. *See* Cal. Gov’t Code § 6253(c)(1)-(4). In exercising a determination-notice extension, the agency must (1) give written notice to the requestor, (2) set forth the reasons for the extension, and (3) set forth the date on which a determination is expected to be dispatched—in no event shall that date “result in an extension for more than 14 days.” *Id.*

The ACLU requests that the City comply with the statute and identify any disclosable records and provide a reasonable date and time for the production of all records. *See* Cal. Gov’t Code §

6253(c). As we have stated previously, an agency may be liable for the attorneys' fees and costs incurred to litigate the production of records improperly withheld. Cal. Gov. Code § 6259(d).

Thank you for your attention to this request. Please do not hesitate to contact me with any questions regarding this letter at sriordan@aclunc.org or on the phone at 916-620-9705. I appreciate your prompt compliance with this letter.

Regards,

A handwritten signature in blue ink, appearing to read 'Sean Riordan', with a long horizontal flourish extending to the right.

Sean Riordan
Senior Staff Attorney
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sriordan@aclunc.org